

**LFC Requester:****Caroline Malone**

**AGENCY BILL ANALYSIS  
2016 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

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*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

*Check all that apply:*

**Original**      X   **Amendment**          

**Correction**           **Substitute**          

**Date**   1/23/2016  

**Bill No:**       SB 174      

**Sponsor:**   Sen. Ivey-Soto  

**Agency Code:**       305      

**Short Title:**   DRIVER'S LICENSE ISSUANCE  
                  & FEDERAL REAL ID  

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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

N/A

**SECTION III: NARRATIVE****BILL SUMMARY**

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

**Synopsis:**

Senate Bill 174 ("SB 174") is an act which amends the Motor Vehicle Code, NMSA 1978, Sections 66-1-1 to -8 in order to comply with the requirements of the federal REAL ID Act of 2005 ("REAL ID"). The proposed act would create two tiers of driver's licenses and identification cards—one tier would be composed of state issued driver's licenses and identification cards which comply with REAL ID, while the second tier would be composed of state issued driver's licenses and identification cards which do not comply with REAL ID. The proposed act also provides for the exchange certain driver's licenses and identification cards. Lastly, the proposed act declares an emergency to allow for immediate implementation of this proposed act.

**FISCAL IMPLICATIONS**

N/A

**SIGNIFICANT ISSUES**

SB 174 proposes to amend the Motor Vehicle Code in order to comply with the REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat, 231m 312 (May 11, 2005).

REAL ID requires that the United States Department of Homeland Security ("DHS") implement the Act; and although DHS has not fully implemented the Act at this time, full implementation of the law is scheduled for early 2018. Also, piecemeal implementation of the law in the interim is permitted (e.g., White Sands Missile Range no longer accepts New Mexico-issued licenses for access to that facility). Under REAL ID, states must comply with all substantive provisions of the federal law to achieve "full compliance." 6 C.F.R. § 37.51 (2015).

For a state-issued document to be acceptable for federal purposes, all REAL ID provisions must be satisfied. "Any driver's license or identification card issued by a State that DHS determines is not in full compliance...is not acceptable as identification by Federal agencies for official

purposes.” 6 C.F.R. § 37.65(a).

SB 174, as proposed, may not comply with REAL ID; however, it is possible that these shortcomings could be remedied by department regulation. REAL ID, 6 C.F.R. Section 37.11(a), mandates that each person applying for a REAL ID compliant ID must be subject to a “mandatory image capture” and that the state must “maintain photographs of individuals even if no card is issued...stored in a format in accordance with [REAL ID’s source document retention requirements.” SB 174 does not require the maintenance of photographs when no card is issued.

REAL ID, 6 C.F.R. Section 37.11(b), requires that “[e]ach applicant must sign a declaration under penalty of perjury that the information on the application is true and correct....” SB 174 lacks any mention of declaration.

REAL ID, 6 C.F.R. Section 37.41, requires the implementation of a security plan by the state motor vehicle facilities, while SB 174 does not mention the implementation of a security plan.

SB 174 allows the secretary to accept as proof of the applicant’s identity a valid New Mexico license or identification card. See HB 174, Sections 2(E)3 and 6(D)4, but it unclear whether the license or identification card relied upon for proof of an applicant’s identity needs to comply with REAL ID. For example, can an applicant use a current New Mexico driver’s license, which does not comply with REAL ID, in order to prove the applicant’s identity in order to obtain a REAL ID compliant driver’s license?

Although many of the issues may be within the Taxation and Revenue Department’s scope of rulemaking authority, more clarity within the text of the legislation could clarify the Legislature’s intent, minimize uncertainty, and provide clear authority to promulgate the necessary and appropriate regulations.

## **PERFORMANCE IMPLICATIONS**

**None**

## **ADMINISTRATIVE IMPLICATIONS**

**None**

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

House Bills 94, 99, 123 and 144 relate to the issuance of New Mexico driver’s licenses and identification cards in an effort to comply with the federal REAL ID Act.

## **TECHNICAL ISSUES**

**None**

## **OTHER SUBSTANTIVE ISSUES**

Because the legislation may result in the enactment of distinctions in legal rights based upon the alienage (or nationality) of the applicant, it may run afoul of state and federal constitutional

provisions that demand equal treatment of people by the government. See N.M. Const. Art. II, § 18; U.S. Const. amend. XIV; see generally Alexander L. Mounts, Note, A Safer Nation? How Driver's License Restrictions Hurt Immigrants & Noncitizens, Not Terrorists, 37 Ind. L. Rev. 247 (2003). It is well-settled that non-citizens enjoy constitutionally-granted equal protection rights. See Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886). In New Mexico, where the people are afforded heightened constitutional equal protection rights, disparate treatment of a disfavored group potentially gives rise to especially searching scrutiny by the judiciary. See, e.g., Breen v. Carlsbad Mun. Schools, 2005-NMSC-028, 138 N.M. 331.

The courts are especially skeptical of government actions which withdraw existing rights from such disfavored groups. See Romer v. Evans, 517 U.S. 620 (1996); Perry v. Brown, 671 F.3d 1052, 1079-1080 (9<sup>th</sup> Cir. 2012). If the courts of New Mexico or the United States find that legislation affronts basic constitutional protections, it will be invalidated. See, e.g., Griego v. Oliver, 2014-NMSC-003.

Twelve states, the District of Columbia and Puerto Rico give their residents access to driver's licenses without regard to immigration status. Those other State laws may call into question the extent to which there will ultimately be full enforcement of the REAL ID Act.

## **ALTERNATIVES**

**None**

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status Quo. Residents of states that fail to comply with REAL ID will ultimately be unable to utilize their state-issued identification cards to board airplanes, enter federal buildings, or for a range of other “official [federal] purposes.” REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231, 312 (May 11, 2005). New Mexico is currently in the process of complying with the terms of REAL ID, but many of the state’s provisions governing the issuance of driver’s licenses and identification cards remain inconsistent with the requirements of the federal law.

## **AMENDMENTS**

**None**